

VIRGINIA'S FORESTRY LAWS



**Virginia Department of
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MIRANDA RULE

Prior to any custodial interrogation (that is, questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his freedom in any significant way) the person must be warned:

- 1) That he has the right to remain silent;
- 2) That any statement he does make may be used as evidence against him;
- 3) That he has a right to the presence of an attorney;
- 4) That if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires.

Unless and until these warnings or a waiver of these rights are demonstrated at the trial, no evidence obtained in the interrogation may be used against the accused.

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SYNOPSIS OF GENERAL DEPARTMENT OF FORESTRY LAWS

§ 10.1-1105. Additional powers and duties of State Forester.

Describes the general powers and duties as given to the State Forester.

GENERAL DEPARTMENT OF FORESTRY LAWS

§ 10.1-1105. Additional powers and duties of State Forester.

The State Forester shall supervise and direct all forest interests and all matters pertaining to forestry within the Commonwealth. He shall have charge of all forest wardens and shall appoint, direct and supervise persons he employs to perform labor in the forest reservations or the nurseries provided for herein, and he is authorized to employ temporary forest wardens to extinguish forest fires in the Commonwealth. He shall take such action as is authorized by law to prevent and extinguish forest fires; develop a program to promote the use of prescribed burning for community protection and ecological, silvicultural, and wildlife management; enforce all laws pertaining to forest and woodlands; prosecute any violation of such laws; develop silvicultural best management practices, including reforestation, prevention

of erosion and sedimentation, and maintenance of buffers for water quality, pursuant to Article 12 (§ 10.1-1181.1 et seq.) of this chapter; collect information relative to forest destruction and conditions; direct the protection and improvement of all forest reservations; and, as far as his duties as State Forester will permit, conduct an educational course on forestry at the University of Virginia for credit toward a degree, at farmers' institutes and at similar meetings within the Commonwealth. He shall provide for the protection of state waters from pollution by sediment deposition resulting from silvicultural activities as provided in Article 12 (§ 10.1-1181.1 et seq.) of this chapter. In addition, the State Forester shall cooperate with counties, municipalities, corporations and individuals in preparing plans and providing technical assistance, based on generally accepted scientific forestry principles, for the protection, management and replacement of trees, wood lots and timber tracts and the establishment and preservation of urban forests, under an agreement that the parties obtaining such assistance shall pay the field and traveling expenses of the person employed in preparing such plans.

(1986, c. 567, § 10-31.4; 1988, c. 891; 1989, c. 215; 1993, c. 948; 1997, c. 7; 1998, c. 156; 1999, c. 220; 2000, c. 997.)

SYNOPSIS OF FOREST FIRE LAWS AND PENALTIES

§ 10.1-1111. Kindling fires on state forests, or cutting or damaging timber on state forest

No one to cut, damage or remove timber or kindle fire, except in accordance prescribed by State Forester.

<CLASS 3 MISDEMEANOR>

§ 10.1-1112. Notices relating to forest fires and trespasses

State Forester to notify public of danger of forest fires and forest fire laws by posting. Unlawful to tear down or mutilate.

<CLASS 4 MISDEMEANOR>

§ 10.1-1139. Who may be summoned to aid forest wardens

Forest Warden may summon as many able-bodied persons between eighteen and fifty years of age to fight fire, so long as they are not engaged in the safe operation of a train.

<CLASS 4 MISDEMEANOR>

§ 10.1-1141. Liability for escaped fires

If a person carelessly, negligently or intentionally without using reasonable care and precaution to prevent its escape, starts a fire on forestland, brushland or wasteland, he is liable for the costs of suppressing the fire.

<CIVIL ACTION>

§ 10.1-1142. Regulating the burning of woods, brush, etc.

<CLASS 3 MISDEMEANOR>

(A) Owner to cut and pile material for safe burning, and take reasonable care to prevent its escape.

(B) During the period February 15 through April 30 it shall be unlawful to burn before 4:00 p.m. or after midnight within 300 feet of woodland, brushland or field containing dry grass, although the precautions have been taken.

(C) Exemption between February 15 and March 1 for Certified Prescribed Burn Managers with application approval.

(D) Unlawful to leave open-air fires burning within 150 feet of woodland, brushland or field containing grass or other inflammable material.

(E) Each offense is a class 3 misdemeanor. In addition, the offender is liable for all costs incurred by the Commonwealth in suppressing the fire.

§ 10.1-1143. Throwing inflammable objects from vehicle on highway while in or near certain lands

Unlawful to throw, toss or drop lighted material from a vehicle moving or standing.

<CLASS 2 MISDEMEANOR>

§ 10.1-1144. Failure to clean premise of certain mills

Any sawmill or stave mill shall comply with this section when certain conditions exists.

<CLASS 4 MISDEMEANOR>

§ 10.1-1145. Failure to maintain logging equipment and railroad locomotives

Shall be equipped with appliances to prevent sparks from starting fire.

<CLASS 4 MISDEMEANOR>

§ 56-428. Railroads liable for damage from fires set out by their engines or trains

<CIVIL ACTION>

§ 10.1-1147. Removal of inflammable material from lands adjoining right-of-way by railroads

To increase protection to forest property from fire after properly notifying landowners; should a fire escape from this action. Section 10.1-1148 shall apply by Civil Action.

<CIVIL ACTION>

§ 10.1-1158. Prohibition of all open burning where serious fire hazards exist

Governor may prohibit open burning due to extreme fire conditions.

<CLASS 3 MISDEMEANOR>

§ 10.1-1159. Upon proclamation of Governor certain acts made unlawful where extraordinary fire hazards exist

Governor may close forest to hunting and fishing and burning. Governor may also extend hunting and fishing seasons to compensate for closure.

<CLASS 2 MISDEMEANOR>

§ 18.2-81. Burning or destroying personal property, standing grain, etc.

If any person maliciously or with "intent" to defraud any insurance company or person set fire to or cause to be burned any standing grain, other crop or personal property of more than \$200 dollar value.

<CLASS 4 FELONY>

§ 18.2-86. Maliciously set fires

Maliciously setting fire to woods, grass, etc.

<CLASS 6 FELONY>

§ 18.2-87. Intentionally set fires

Intentionally set fires and liability for suppression of fire if a person intentionally sets fire to brush, woods, etc. and if he intentionally allows the fire to escape to lands of another whereby the adjoining property is damaged or jeopardized.

<CLASS 1 MISDEMEANOR>

§ 18.2-88. Carelessly set fires

Liability for costs of suppressing fire if a person carelessly or intentionally set fire whereby the property of another is jeopardized or damaged.

<CLASS 4 MISDEMEANOR>

FOREST FIRE LAWS

§ 10.1-1111. Kindling fires on state forests; cutting and removing timber; damaging land or timber.

Any person who kindles fire upon any of the state forests of this Commonwealth, except in accordance with regulations prescribed by the State Forester, or who cuts and removes any timber, or who damages or causes the damage of forestland or timber belonging to the Commonwealth, shall be guilty of a Class 3 misdemeanor for each offense committed.

(Code 1950, § 10-44; 1986, c. 539; 1988, c. 891.)

§ 10.1-1112. Notices relating to forest fires and trespasses.

The State Forester shall distribute notices, printed in large letters on cloth or other suitable material, calling attention to the danger of forest fires, to the forest fire laws, and to trespass laws and their penalties, to forest wardens, and to owners of timberland to be posted by them in conspicuous places. Any person other than a forest warden or the owner of the land on which notices are posted, who tears down, mutilates or defaces any such notice shall be guilty of a Class 4 misdemeanor.

(1986, c. 567, § 10-31.5; 1988, c. 891.)

§ 10.1-1113. Not liable for trespass in performance of duties.

No action for trespass shall lie against the State Forester, or any agent or employee of the State Forester for lawful acts done in performance of his duties.

(1986, c. 567, § 10-31.7; 1988, c. 891.)

§ 10.1-1124. Counties and certain cities to pay annual sums for forest protection, etc.

A. Upon presentation to its governing body of an itemized statement duly certified by the State Forester, each county in this Commonwealth, or city which enters into a contract with the State Forester under § 10.1-1125 to provide forest fire prevention, shall repay into the state treasury annually any amounts expended in the preceding year by the State Forester in such county or city for forest protection, forest fire detection, forest fire prevention and forest fire suppression, not to exceed in any one year an amount measured by the acreage, computed upon the basis of five cents per acre of privately owned forests in the county or city, according to the most recent United States Forest Survey. In any additions or deductions of acreage from that given by this survey, any land, other than commercial orchards, sustaining as its principal cover a growth of trees or woody shrubs shall be considered forest land, irrespective of the merchantability of the growth, and cutover land shall be considered as forest land unless it has been cleared or improved for other use. Open land shall be considered as forest land when it bears at least eighty well-distributed seedlings or sprouts of woody species per acre. The amounts so repaid by the counties or cities into the state treasury shall be credited to the Forestry Operations Fund for forest protection, forest fire detection, forest fire prevention and forest fire suppression in the Commonwealth and, with such other funds as may be appropriated by the General Assembly or contributed by the United States or any governmental or private agency for these purposes, shall be used and disbursed by the State Forester for such purposes. In cities this subsection

shall be subject to § 10.1-1125.

B. In any case in which the State Forester and the governing body of any county or city cannot agree upon the additions or deductions to privately owned forest acreage in a particular county or city, or to changes in forest acreage from year to year, the question shall be submitted to the judge of the circuit court of the county or city by a summary proceeding, and the decision of the judge certified to the governing body and to the State Forester, respectively, shall be conclusive and final.

(Code 1950, § 10-46; 1964, c. 79; 1984, c. 715; 1986, c. 567; 1988, c. 891.)

§ 10.1-1125. Application of Articles 4, 5 and 6 to cities; State Forester authorized to enter into contracts with cities.

A. In addition to the application of this article and Articles 5 (§ 10.1-1131 et seq.) and 6 (§ 10.1-1135 et seq.) to forestlands lying in counties, such articles shall also apply to forestlands lying within cities. For the purposes of such articles as applied to cities, forest land shall be considered as comprising land which bears at least eighty well-distributed seedlings or sprouts of woody species per acre and which is specifically included in the provisions of the contract with the city.

B. The State Forester is authorized to enter into contracts prepared by the Attorney General with the governing body of any city in which any such forestland is located. The contract shall include provisions for the State Forester to furnish forest fire protection, prevention, detection, and suppression services and to enforce state law applicable to forest fires on forestlands upon any such lands located within a city. The services so provided by the State Forester

shall be of the same general type, character, and standard as the same services provided in counties generally.

(1964, c. 79, § 10-46.1; 1974, c. 216; 1984, c. 750; 1986, cc. 188, 567; 1988, c. 891.)

§ 10.1-1126. State Forester authorized to enter into agreements with federal agencies.

The State Forester is authorized to enter into agreements, approved by the Attorney General of Virginia, with agencies of the United States government holding title to forest land in any county, city or town. Any such agreement may include provisions for the State Forester to furnish forest fire protection, prevention, detection, and suppression services together with enforcement of state law applicable to forest fires on forestlands within such county, city or town. Costs of such services provided by the State Forester shall be reimbursed to him as provided in the agreement. The services provided by the State Forester shall be of the same general type, character, and standard as the same services provided in counties, cities and towns generally.

(1974, c. 216, § 10-46.2; 1984, c. 750; 1986, cc. 188, 567; 1988, c. 891.)

§ 10.1-1127. County and city levies and appropriations.

The governing bodies of the counties and those cities entering into a contract as provided in § 10.1-1125 are authorized to levy taxes and appropriate money for forest protection, improvement and management.

(Code 1950, § 10-47; 1964, c. 79; 1988, c. 891.)

§ 10.1-1135. Appointment and compensation of forest wardens; oath; powers.

The State Forester, when he deems it necessary, may request the Governor to commission persons designated by the State Forester to act as forest wardens of the Commonwealth, to enforce the forest laws and, under his direction, to aid in carrying out the purposes of this chapter. Such wardens shall receive compensation as may be provided in accordance with law for the purpose. Before entering upon the duties of their office, forest wardens thus appointed shall take the proper official oath before the clerk of the court of the county or city in which they reside. While holding such office forest wardens shall be conservators of the peace. They also shall have the authority to enforce the provisions of § 62.1-194.2.

The State Forester may designate certain forest wardens to be special forest wardens. Special forest wardens shall have the same authority and power as sheriffs throughout the Commonwealth to enforce the forest laws.

(Code 1950, § 10-55; 1964, c. 79; 1970, c. 433; 1986, cc. 188, 567; 1988, cc. 196, 891.)

§ 10.1-1136. Duties of forest wardens.

The duties of the forest wardens are to (i) enforce all forest and forest fire statutes and regulations of the Commonwealth, (ii) serve as forest fire incident commander and perform other duties as needed in the management and suppression of forest fire incidents as long as the authority granted under this section does not conflict with or diminish the lawful authority, duties, and responsibilities of fire chiefs or other fire service officers in charge, including but not limited to the provisions of Chapter 2 (§ 27-6.1 et seq.) of Title 27, and (iii) protect the forests of the Commonwealth.

(Code 1950, § 10-56; 1986, c. 188; 1988, c. 891.)

§ 10.1-1137. Duty in case of fires and payment of costs of suppression.

When any forest warden sees or receives a report of a forest fire, he shall proceed immediately to the scene of the fire and employ such persons and means as in his judgment are expedient and necessary to extinguish the fire, within the limits of the expense he has been authorized to incur in his instructions from the State Forester. He shall keep an itemized account of all expenses incurred and immediately send the account verified by affidavit to the State Forester.

Upon approval by the State Forester the account shall be paid from the Forestry Operations Fund.

No such payment shall be made to any person who has maliciously started the fire or to any person whose negligence caused or contributed to the setting of the fire.

(Code 1950, § 10-57; 1964, c. 79; 1986, cc. 188, 567; 1988, c. 891.)

§ 10.1-1138. Rewards for information leading to conviction of arsonists or incendiaries.

The State Forester shall be authorized, whenever it appears to him that forest fires in any part of the Commonwealth are caused by unknown arsonists or incendiaries, to offer a monetary reward for information sufficient to procure conviction in a court of appropriate jurisdiction of the person or persons responsible for such fire. No law-enforcement officer paid in whole or in part from public funds or employee of the Department shall be eligible to receive such reward.

All such reward money shall be paid from funds

appropriated for the protection and development of the forest resources of this Commonwealth, and shall not exceed either \$10,000 paid in any one fiscal year or \$2,000 paid to any one person for information leading to any one conviction.

(1966, c. 8, § 10-57.1; 1986, cc. 188, 567; 1988, c. 891.)

§ 10.1-1139. Who may be summoned to aid forest warden.

Any forest warden to whom written instructions have been issued by the State Forester authorizing him to employ persons to assist in suppressing forest fires, shall have the authority to summon as many able-bodied persons between eighteen and fifty years of age as may, in his discretion, be reasonably necessary to assist in extinguishing any forest fire in any county or city of the Commonwealth which is organized for forest fire control under the direction of the State Forester. Any person summoned by a forest warden to fight a forest fire shall be paid at the rate of pay provided in the Department of Forestry wage scale for fire fighting in effect in the county or city, or part thereof, in which the fire is fought. Wardens shall not summon for such service any person while engaged in maintaining the rights-of-way of railroads for the safe passage of trains, nor any station agent, operator or other person while engaged in duties necessary for the safe operation of trains.

Any person summoned who fails or refuses to assist in fighting the fire, unless the failure is due to physical inability or other valid reason, shall be guilty of a Class 4 misdemeanor.

(Code 1950, § 10-59; 1964, c. 79; 1973, c. 401; 1986, c. 188; 1988, c. 891.)

§ 10.1-1140. Liability of warden for trespass.

No action for trespass shall lie against any forest warden on account of lawful acts done in the legal performance of his duties.

(Code 1950, § 10-60; 1988, c. 891.)

§ 10.1-1140.1. Defense of forest wardens.

If any commissioned forest warden appointed by the State Forester is brought before any regulatory body, summoned before any grand jury, arrested, indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties, the State Forester may employ special counsel approved by the Attorney General to defend the forest warden. Upon a finding that the forest warden did not violate a law or regulation resulting from the act which was subject of the investigation, the State Forester shall pay the special counsel legal fees and expenses subject to the approval of the Attorney General. The payment shall be made from funds appropriated for the administration of the Department of Forestry.

(1992, c. 113.)

§ 10.1-1141. Liability and recovery of cost of fighting forest fires.

The State Forester in the name of the Commonwealth shall collect the costs of fire fighting performed under the direction of a forest warden in accordance with § 10.1-1139 from any person who, negligently or intentionally without using reasonable care and precaution starts a fire or who negligently or intentionally fails to prevent its escape, which fire burns on any forestland, brushland, grassland or wasteland. Such person shall be liable for the full amount

of all expenses incurred by the Commonwealth, for fighting or extinguishing such fire. All expenses collected shall be credited to the Forestry Operations Fund. It shall be the duty of the Commonwealth's attorneys to institute and prosecute proper proceedings under this section, at the instance of the State Forester.

The State Forester may institute an action and recover from either one or both parents of any minor, living with such parents or either of them, the cost of forest fire suppression suffered by reason of the willful or malicious destruction of, or damage to, public or private property by such minor. No more than \$750 may be recovered from such parents or either of them as a result of any forest fire incident or occurrence on which such action is based.

(Code 1950, §§ 10-58, 10-61; 1964, c. 79; 1986, c. 188; 1988, c. 891.)

§ 10.1-1142. Regulating the burning of woods, brush, etc.; penalties.

A. It shall be unlawful for any owner or lessee of land to set fire to, or to procure another to set fire to, any woods, brush, logs, leaves, grass, debris, or other inflammable material upon such land unless he previously has taken all reasonable care and precaution, by having cut and piled the same or carefully cleared around the same, to prevent the spread of such fire to lands other than those owned or leased by him. It shall also be unlawful for any employee of any such owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris, or other inflammable material, upon such land unless he has taken similar precautions to prevent the spread of such fire to any other land.

B. Except as provided in subsection C, during the period

February 15 through April 30 of each year, even though the precautions required by the foregoing subsection have been taken, it shall be unlawful, in any county or city or portion thereof organized for forest fire control under the direction of the State Forester, for any person to set fire to, or to procure another to set fire to, any brush, leaves, grass, debris or field containing dry grass or other inflammable material capable of spreading fire, located in or within 300 feet of any woodland, brushland, or field containing dry grass or other inflammable material, except between the hours of 4:00 p.m. and 12:00 midnight.

The provisions of this subsection shall not apply to any fires which may be set on federal lands.

C. Subsection B shall not apply to any fire set between February 15 and March 1 of each year, if:

1. The fire is set for "prescribed burning" that is conducted in accordance with a "prescription" and managed by a "certified prescribed burn manager" as those terms are defined in § 10.1-1150.1;
2. The burn is conducted in accordance with § 10.1-1150.4;
3. The State Forester has, prior to February 1, approved the prescription for the burn; and
4. The burn is being conducted for one of the following purposes: (i) control of exotic and invasive plant species that cannot be accomplished at other times of the year; (ii) wildlife habitat establishment and maintenance that cannot be accomplished at other times of the year; or (iii) management necessary for natural heritage resources.

The State Forester may on the day of any burn planned

to be conducted pursuant to this subsection revoke his approval of the prescription for the burn if hazardous fire conditions exist. The State Forester may revoke the certification of any certified prescribed burn manager who violates any provision of this subsection.

D. Any person who builds a fire in the open air, or uses a fire built by another in the open air, within 150 feet of any woodland, brushland or field containing dry grass or other inflammable material, shall totally extinguish the fire before leaving the area and shall not leave the fire unattended.

E. Any person violating any provisions of this section shall be guilty of a Class 3 misdemeanor for each separate offense. If any forest fire originates as a result of the violation by any person of any provision of this section, such person shall, in addition to the above penalty, be liable to the Commonwealth for the full amount of all expenses incurred by the Commonwealth in suppressing such fire. Such amounts shall be recoverable by action brought by the State Forester in the name of the Commonwealth on behalf of the Commonwealth and credited to the Forestry Operations Fund.

(Code 1950, §§ 10-62, 10-63; 1964, c. 79; 1986, c. 188; 1988, c. 891; 1996, cc. 74, 1008; 2001, c. 319.)

§ 10.1-1143. Throwing inflammatory objects from vehicle on highway while in or near certain lands.

It shall be unlawful for any person to throw, toss or drop from a vehicle moving or standing on a highway any lighted smoking material, lighted match, lighted material of any nature, or any bomb or device liable to set fire to inflammable material on the ground while in or near

any forestland, brushland or field containing inflammable vegetation or trash.

Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor for each separate offense.

(1954, c. 35, § 10-64.1; 1986, c. 188; 1988, c. 891.)

§ 10.1-1144. Failure to clean premises of certain mills.

Any individual, firm, or corporation responsible for the operation of a saw mill, stave mill, heading mill, or any other mill in, through or near forest or brushland shall clean the premises for at least a distance of fifty yards in all directions from any fires maintained in or about, or in connection with the operation of such mill. The premises shall also be cleaned for a distance of 100 feet in all directions from any sawdust pile, slab pile, or any other inflammable material which accumulates from the operation of such mill, or all matter not essential to the operation of such mill, which is liable to take fire from any sparks emitted from such fires. When any mill is removed or ceases to operate for a period of ten consecutive days, any fire which may be burning in any sawdust pile, slab pile or other debris shall be totally extinguished unless the owner of the land on which such fire is located assumes in writing responsibility for the control of the fire. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a Class 4 misdemeanor. Each day or fraction thereof on which any such mill is operated in violation of the provisions of this section and each day or fraction thereof on which fire is allowed to burn in any sawdust pile, slab pile or other inflammable debris in violation of the provisions of this section, shall

be deemed a separate offense.

Whenever it is established that a forest fire originated from a fire maintained in or about any such mill, the individual, firm, or corporation, from whose mill any such fire originated shall immediately become liable for all costs incurred in fighting such fire.

(Code 1950, § 10-64; 1986, c. 188; 1988, c. 891.)

§ 10.1-1145. Failure to properly maintain logging equipment and railroad locomotives.

Logging equipment and railroad locomotives operated in, through, or near forestland, brushland or fields containing dry grass or other inflammable material shall be equipped with appliances and maintained to prevent, as far as may be possible, the escape of fire and sparks from the smokestacks. Any person failing to comply with these requirements shall be guilty of a Class 4 misdemeanor for each offense committed.

(Code 1950, § 10-65; 1986, c. 188; 1988, c. 891.)

§ 10.1-1147. Removal of inflammable material from lands adjoining right-of-way by railroads.

For the purpose of providing increased protection to forest property from fire originating along railroads, any railroad company shall have the right, subject to the provisions of this section, without liability for trespass to enter upon forest or brushlands for a distance of fifty feet from the railroad right-of-way and to clear from such a strip any inflammable material such as leaves, grass, dead trees, slash and brush, but shall not remove any valuable timber growth or other things of value without consent of and recompense to the owner. Not less than fifteen days prior

to clearing such land, the railroad company shall give the owner notice of its intention, together with a transcript of this section, by letter deposited in the United States mail to his last known address. If the owner does not file objections to such clearings with the State Corporation Commission within ten days of the date of such notice he shall be deemed to have given consent. Upon the filing by an owner of such objection showing cause why such clearing should not be done the State Corporation Commission shall review the case and may sustain the objection of the owner or permit the clearing in whole or in part.

The State Corporation Commission may require assistance of the State Forester in furnishing information pertinent to the administration of this section.

The provisions of this section shall not apply to temporary tram roads used for hauling logs and lumber.

(Code 1950, § 10-66; 1988, c. 891.)

§ 10.1-1148. Fires caused by violation of provisions of article; liability to Commonwealth.

Individuals and corporations causing fires by violation of any provision of this article shall be liable to the Commonwealth for (i) all damages the Commonwealth sustained by such fire or fires, and (ii) the full amount of all expenses incurred by the Commonwealth, in fighting or extinguishing such fire.

(Code 1950, § 10-67; 1964, c. 79; 1988, c. 891.)

§ 10.1-1149. Southeastern Interstate Forest Fire Protection Compact.

Chapter 63 of the 1956 Acts of Assembly authorizing the Governor to execute a compact to promote effective prevention and control of forest fires in the Southeastern region of the United States, is incorporated in this Code by this reference.

(1956, c. 63, § 27-5.2; 1988, c. 891.)

§ 10.1-1150. Middle Atlantic Interstate Forest Fire Protection Compact.

Chapter 6 of the 1966 Acts of Assembly authorizing the Governor to execute a compact to promote effective prevention and control of forest fires in the Middle Atlantic region of the United States, is incorporated in this Code by this reference.

(1966, c. 6, § 27-5.4; 1988, c. 891.)

§ 10.1-1158. Prohibition of all open burning where serious fire hazards exist; penalty.

It shall be unlawful when the forestlands, brushlands and fields in this Commonwealth or any part thereof have become so dry as to create a serious fire hazard endangering lives and property, for any persons to do any open burning nearer than 300 feet from any such forestlands, brushlands or fields containing dry grass or other flammable material.

This article shall not be effective until the Governor, upon recommendation of the State Forester, proclaims such a condition to exist in this Commonwealth or any part thereof, and it shall be in effect until the Governor proclaims such condition to have terminated.

It shall be the duty of all authorized law-enforcement officers of the Commonwealth, counties, and municipalities

to enforce the provisions of this section.

Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor for each separate offense.

(1986, c. 188, § 27-54.5; 1988, c. 891.)

§ 10.1-1159. Upon proclamation of Governor certain acts made unlawful where extraordinary fire hazards exist; closing of hunting and fishing seasons.

Upon proclamation of the Governor, it shall be unlawful, when the forestlands, brushlands and fields in the Commonwealth or any part thereof have become so dry as to create an extraordinary fire hazard endangering lives and property, for any person, except the owner, tenant or owner's authorized agent, persons regularly engaged in cutting, processing, or moving forest products, or person on official duty, to enter or travel in any state, county, municipal or private forestlands, brushlands, marshland, fields or idle or abandoned lands in the area so affected except on public highways or well-defined private roads. During such period hunting and fishing seasons shall be closed, except hunting of migratory waterfowl and fishing as hereinafter provided, on all land and water within the Commonwealth or any geographical part thereof affected by proclamation. It shall further be unlawful during such periods for any person to hunt or fish except as hereinafter provided, smoke, burn leaves, grass, brush or debris of any type or to ignite or maintain any open fire nearer than 300 feet from any such forestlands, brushlands or fields containing inflammable vegetation or marshland adjoining such forestlands, brushlands, fields or idle or abandoned lands.

It shall not be unlawful to fish or hunt migratory waterfowl from a boat, or from a blind entirely surrounded by water and reached by a boat, or on nonforested islands at least 300 feet from the mainland shore and reached by a boat, when the boat embarks from and lands at established boat landings, and at no other time touches shore nearer than 300 feet from any forestlands, brushlands, or fields containing inflammable vegetation or marshland adjoining such areas.

It shall be the duty of all authorized law-enforcement officers of the Commonwealth, counties and municipalities to enforce the provisions of this section.

Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor for each separate offense.

(1954, c. 134, § 27-54.1; 1964, c. 65; 1966, c. 302; 1986, c. 188; 1988, c. 891.)

§ 10.1-1160. Effect of proclamation on hunting season.

When any proclamation is issued pursuant to § 10.1-1158 during any open hunting season (with the exception of any season on migratory birds or waterfowl, the limits of which are prescribed by any agency of the federal government), or when the opening date of any such hunting season occurs while such proclamation is effective, the season, if open, may be extended by the Governor for a period not exceeding the number of legal hunting days during which such proclamation is in effect, beginning on the first legal hunting day after the expiration of the season. If the season is not open, it may open beginning on the first legal hunting day after such proclamation is rescinded and remain open for a period not exceeding the prescribed

length of the season.

(1954, c. 134, § 27-54.2; 1972, c. 150; 1988, c. 891.)

§ 10.1-1161. Notice of issuance, amendment or rescission of proclamation.

When any proclamation is issued, amended or rescinded the Secretary of the Commonwealth shall promptly give notice thereof through a newspaper or newspapers of general circulation in the area or areas affected. In addition, the Secretary may, in his discretion, give such additional notice as he deems necessary.

(Code 1950, § 10-75; 1952, c. 417; 1956, c. 75; 1988, c. 891.)

§ 27-15.1. Authority of chief or other officer in charge when answering alarm or operating at an emergency incident; penalty for refusal to obey orders.

While any fire/EMS department or fire/EMS company is in the process of answering an alarm or operating at an emergency incident where there is imminent danger or the actual occurrence of fire or explosion or the uncontrolled release of hazardous materials which threaten life or property and returning to the station, the chief or other officer in charge of such fire/EMS department or company at that time shall have the authority to: (i) maintain order at such emergency incident or its vicinity, (ii) direct the actions of the fire fighters or emergency medical services personnel at the incident, (iii) notwithstanding the provisions of §§ 46.2-888 through 46.2-891, keep bystanders or other persons at a safe distance from the incident and emergency equipment, (iv) facilitate the speedy movement and operation of emergency equipment and fire fighters or emergency medical services personnel,

(v) cause an investigation to be made into the origin and cause of the incident, and (vi) until the arrival of a police officer, direct and control traffic in person or by deputy and facilitate the movement of traffic. The fire chief or other officer in charge shall display his fire fighter's or emergency medical services personnel's badge, or other proper means of identification. Notwithstanding any other provision of law, this authority shall extend to the activation of traffic control signals designed to facilitate the safe egress and ingress of emergency equipment at a fire/EMS station. Any person or persons refusing to obey the orders of the chief or his deputies or other officer in charge at that time shall be guilty of a Class 4 misdemeanor. The chief or other officer in charge shall have the power to make arrests for violation of the provisions of this section. The authority granted under the provisions of this section may not be exercised to inhibit or obstruct members of law-enforcement agencies or rescue squads from performing their normal duties when operating at such emergency incident, nor to conflict with or diminish the lawful authority, duties and responsibilities of forest wardens, including but not limited to the provisions of Chapter 11 of Title 10.1. Personnel from the news media, such as the press, radio and television, when gathering the news may enter at their own risk into the incident area only when the officer in charge has deemed the area safe and only into those areas of the incident that do not, in the opinion of the officer in charge, interfere with the fire/EMS department or fire fighters or emergency medical services personnel dealing with such emergencies, in which case the chief or other officer in charge may order such person from the scene of the emergency incident.

(1970, c. 187; 1977, c. 326; 1984, c. 644; 2001, c. 142.)

§ 18.2-10. Punishment for conviction of felony.

The authorized punishments for conviction of a felony are:

(a) For Class 1 felonies, death, if the person so convicted was 16 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 16 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.

(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.

(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.

(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without

a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.

For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.

For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

(1975, cc. 14, 15; 1977, c. 492; 1990, c. 788; 1991, c. 7; 1994, 2nd Sp. Sess., cc. 1, 2; 1995, c. 427; 2000, cc. 361, 767, 770; 2003, cc. 1031, 1040.)

§ 18.2-11. Punishment for conviction of misdemeanor.

The authorized punishments for conviction of a

misdemeanor are:

(a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.

(b) For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.

(c) For Class 3 misdemeanors, a fine of not more than \$500.

(d) For Class 4 misdemeanors, a fine of not more than \$250.

For a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.

(1975, cc. 14, 15; 1990, c. 788; 2000, c. 770.)

§ 18.2-81. Burning or destroying personal property, standing grain, etc.

If any person maliciously, or with intent to defraud an insurance company or other person, set fire to or burn or destroy by any explosive device or substance, or cause to be burned, or destroyed by any explosive device or substance, or aid, counsel, or procure the burning or destroying by any explosive device or substance, of any personal property, standing grain or other crop, he shall, if the thing burnt or destroyed, be of the value of \$200 or more, be guilty of a Class 4 felony; and if the thing burnt or destroyed be of less value, he shall be guilty of a Class 1 misdemeanor.

(Code 1950, §§ 18.1-79, 18.1-85; 1960, c. 358; 1972, c. 53; 1975, cc. 14, 15; 1981, c. 197.)

§ 18.2-86. Setting fire to woods, fences, grass, etc.

If any person maliciously set fire to any wood, fence, grass, straw or other thing capable of spreading fire on land, he shall be guilty of a Class 6 felony.

(Code 1950, § 18.1-82; 1960, c. 358; 1968, c. 362; 1975, cc. 14, 15.)

§ 18.2-87. Setting woods, etc., on fire intentionally whereby another is damaged or jeopardized.

Any person who intentionally sets or procures another to set fire to any woods, brush, leaves, grass, straw, or any other inflammable substance capable of spreading fire, and who intentionally allows the fire to escape to lands not his own, whereby the property of another is damaged or jeopardized, shall be guilty of a Class 1 misdemeanor, and shall be liable for the full amount of all expenses incurred in fighting the fire.

(Code 1950, § 18.1-83; 1960, c. 358; 1975, cc. 14, 15; 1988, c. 403.)

§ 18.2-88. Carelessly damaging property by fire.

If any person carelessly, negligently or intentionally set any woods or marshes on fire, or set fire to any stubble, brush, straw, or any other substance capable of spreading fire on lands, whereby the property of another is damaged or jeopardized, he shall be guilty of a Class 4 misdemeanor, and shall be liable for the full amount of all expenses

incurred in fighting the fire.

(Code 1950, § 18.1-84; 1960, c. 358; 1975, cc. 14, 15.)

§ 56-428. Railroads liable for damage from fires set out by their engines or trains.

Whenever any person sustains damage from fire occasioned by sparks or coals dropped or thrown from the engine or train of any railroad company, such company shall be liable for the damage so sustained, whether such fire originated on the company's right-of-way or not.

(Code 1919, § 3992; 1996, cc. 114, 157.)

SYNOPSIS OF CERTIFIED PRESCRIBED BURN MANAGER LAWS

§ 10.1-1150.1. Definitions.

Defines certified prescribed burn manager, prescribed burning and prescription as relates to prescribed burn certification.

§ 10.1-1150.2. State Forester to establish certification process.

The State Forester shall develop and administer a certification process and training course for the "certified prescribed burn manager" program.

§ 10.1-1150.3. Voluntary certification.

Certification is not mandatory to conduct burning in Virginia but highly recommended due to liability issues. Certification

process is outlined.

§ 10.1-1150.4. Prescribed burn elements.

Specific plan requirements are listed in detail, including landowner contact information, weather parameters, burning techniques, control measures, and supervision requirements.

§ 10.1-1150.5. Liability.

A. Any prescribed burning conducted shall be in the public interest and not constitute a nuisance.

B. Any person certified as a “prescribed burn manager” shall not be liable for any damage or injury caused by or resulting from the smoke of a prescribed burn carried out in compliance with requirement of this article.

C. Whenever a nuisance or damage results from the negligent or improper conduct of the burn or the burn elements as described in 10.1-1150.4, then Subsections A and B shall not apply.

§ 10.1-1150.6. Revocation of certification.

Allows for the process of decertification due to practices which threaten public health and safety.

CERTIFIED PRESCRIBED BURN MANAGER LAWS

§ 10.1-1150.1. Definitions.

As used in this article unless the context requires a different meaning:

“Certified prescribed burn manager” means any person who has successfully completed a certification process established by the State Forester under § 10.1-1150.2.

“Prescribed burning” means the controlled application of fire or wildland fuels in either the natural or modified state, under specified environmental conditions, which allows a fire to be confined to a predetermined area and produces the fire behavior and fire characteristics necessary to attain planned fire treatment and ecological, silvicultural, and wildlife management objectives.

“Prescription” means a written statement defining the objectives to be attained by a prescribed burning and the conditions of temperature, humidity, wind direction and speed, fuel moisture, and soil moisture under which a fire will be allowed to burn. A prescription is generally expressed as an acceptable range of the prescription elements.

(1998, c. 156.)

§ 10.1-1150.2. State Forester to establish certification process.

The State Forester shall develop and administer a certification process and training course for any individual who desires to become a certified prescribed burn manager. The training program shall include the following subjects: the legal aspects of prescribed burning, fire behavior, prescribed burning tactics, smoke management, environmental effects, plan preparation, and safety. A final examination on these subjects shall be given to all attendees. The State Forester may charge a reasonable fee to cover the costs of the course and the examination.

(1998, c. 156.)

§ 10.1-1150.3. Voluntary certification.

To be certified as a prescribed burn manager, a person shall:

1. Successfully complete all components of the prescribed burn course developed by the State Forester and pass the examination developed for the course;
2. Successfully complete a training course comparable to that developed by the State Forester and pass the examination developed for Virginia's course; or
3. Demonstrate relevant past experience, complete a review course and pass the examination developed for Virginia's course.

(1998, c. 156.)

§ 10.1-1150.4. Prescribed burn elements.

Prescribed burning shall be performed in the following manner:

1. A prescription for the prescribed burn shall be prepared by a certified prescribed burn manager prior to the burn. The prescription shall include: (i) the landowner's name, address, and telephone number, and the telephone number of the certified prescribed burn manager who prepared the plan; (ii) a description of the area to be burned, a map of the area to be burned, the objectives of the prescribed burn, and the desired weather conditions or parameters; (iii) a summary of the methods to be used to start, control, and extinguish the prescribed burn; and (iv) a smoke management plan. The smoke management plan shall be based on guidelines presented in the Virginia Department of Forestry publication, "Voluntary Smoke Management Guidelines for Virginia," and the U.S. Forest

Service's technical publication, "A Guide to Prescribed Fire in Southern Forests." A copy of the prescription shall be retained at the site throughout the period of the burning;

2. Prescribed burning shall be conducted under the direct supervision of a certified prescribed burn manager, who shall ensure that the prescribed burning is in accordance with the prescription; and

3. The nearest regional office of the Virginia Department of Forestry shall be notified prior to the burn.

(1998, c. 156.)

§ 10.1-1150.5. Liability.

A. Any prescribed burning conducted in compliance with the requirements of this article, state air pollution control laws, and any rules adopted by the Virginia Department of Forestry shall be in the public interest and shall not constitute a nuisance.

B. Any landowner or his agent who conducts a prescribed burn in compliance with the requirements of this article, state air pollution control laws, and any rules adopted by the Virginia Department of Forestry shall not be liable for any damage or injury caused by or resulting from smoke.

C. Subsections A and B of this section shall not apply whenever a nuisance or damage results from the negligent or improper conduct of the prescribed burn or when the prescribed burn elements described in § 10.1-1150.4 have not been complied with.

(1998, c. 156.)

§ 10.1-1150.6. Revocation of certification.

If the actions of any certified prescribed burn manager or the prescriptions prepared by him violate any provision of this article, state air pollution control laws, or Virginia Department of Forestry rules or threaten public health and safety, his certification may be revoked by the State Forester.

(1998, c. 156.)

SEED TREE LAWS

§ 10.1-1162. Definitions.

As used in this article unless the context requires a different meaning:

"Diameter" means the distance through a tree at the point of average thickness as measured from outside of bark to outside of bark at a point on a trunk ten inches above the general ground level.

"Person" means any landowner, owner of timber, owner of timber rights, sawmill operator, sawmill owner, veneer wood operator, pulpwood contractor, or any person engaged in the business of severing timber from the stump.

"Tree" means any tree of a currently commercially valuable species which is six inches or more in diameter.

(Code 1950, § 10-75; 1952, c. 417; 1956, c. 75; 1988, c. 891.)

§ 10.1-1163. Exemptions from article.

A. This article shall not apply to any acre of land on which there are present at the time of final cutting of the timber 400 or more loblolly or white pine seedlings, singly or together, four feet or more in height.

B. This article shall not apply to any person who clears or who procures another to clear his land for bona fide agricultural or improved pasture purposes or for the purpose of subdividing such land for sale for building sites. For the purpose of this article, evidence of intent of bona fide agricultural or improved pasture use shall require, as a minimum and within twelve months from the date of completion of commercial cutting, that the land intended for such use be cleared of all trees, snags, brush, tree tops, and debris by piling and burning or otherwise disposing of same, or by enclosing the area with a well-constructed fence and planting grass seed thereon so as to make a bona fide improved pasture. In the case of clearing for building sites evidence of intent shall be the construction of dwellings or other bona fide structure in progress or completed within two years from the date of completion of commercial cutting.

C. This article shall not apply to land which has been zoned for a more intensive land use than agricultural or forestal use.

D. The provisions of this article shall not apply to any acre or acres of forest land for which a planting, cutting or management plan has been prepared, designed to provide conservation of natural resources, and which plan has been submitted to and approved by the State Forester previous to the cutting of any trees on the acre or acres concerned. If such plan has been submitted to the State Forester by registered or certified mail and he has not approved the plan, or disapproved it with a statement in writing of his reasons therefor, within a period of sixty days from the date of submission, the plan shall be deemed approved and shall be effective for the purposes of this section.

E. The State Forester may grant exemptions from

this article to individual landowners who wish to grow hardwoods on their property. The State Forester may place conditions on the exemption as he deems advisable for the conservation of natural resources.

(Code 1950, §§ 10-81, 10-82, 10-83; 1950, p. 58; 1952, c. 412; 1956, c. 75; 1960, c. 244; 1988, c. 891; 1996, c. 285; 1997, c. 146.)

§ 10.1-1164. Pine trees to be left uncut for reseeded purposes.

Every landowner who cuts, or any person who cuts or procures another to cut, or any person who owns the timber at the time of cutting and knowingly and willfully allows to be cut, for commercial purposes, timber from ten acres or more of land on which loblolly or white pine, singly or together, occur and constitute twenty-five percent or more of the live trees on each acre or acres, shall reserve and leave uncut and uninjured not less than eight cone-bearing loblolly or white pine trees fourteen inches or larger in diameter on each acre thus cut and upon each acre on which such pine trees occur singly or together, unless there is in effect for such land a planting, cutting or management plan as provided in subsection D of § 10.1-1163. Where eight cone-bearing loblolly or white pine trees fourteen inches or larger in diameter are not present on any particular acre, there shall be left uncut and uninjured for each such pine two cone-bearing pine trees of the largest diameter present less than fourteen inches in diameter. Such pine trees shall be left uncut for the purpose of reseeded the land and shall be healthy, windfirm, and of well-developed crowns, evidencing seed-bearing ability by the presence of cones in the crowns.

(Code 1950, § 10-76; 1950, p. 58; 1952, c. 417; 1956, c. 75; 1960, c. 244; 1968, c. 73; 1988, c. 891; 1996, c. 285.)

§ 10.1-1165. When trees left for reseeding purposes may be cut.

Pine trees which are left uncut for purposes of reseeding shall be the property of the landowner but shall not be cut until at least three years have elapsed after the cutting of the timber on such lands.

(Code 1950, § 10-77; 1956, c. 75; 1960, c. 244; 1972, c. 163; 1988, c. 891.)

§ 10.1-1166. Posting or publication of notices.

The State Forester shall distribute notices calling attention to the provisions of this article in conspicuous places in all counties and cities where such pine timber grows in appreciable quantities, and may publish notices in newspapers of general circulation in such counties and cities.

(Code 1950, § 10-78; 1956, c. 75; 1988, c. 891.)

§ 10.1-1167. Penalty for violation of article.

Any person violating any provision of this article shall be guilty of a misdemeanor and upon conviction shall be fined thirty dollars for each seed tree cut from the land in violation of this article. The total amount of fine for any one acre shall not exceed \$240.

(Code 1950, § 10-79; 1950, p. 58; 1956, c. 75; 1972, c. 163; 1988, c. 891; 1996, c. 285.)

§ 10.1-1168. Procedure to ensure proper planting after conviction; cash deposit or bond; inspection or planting by State Forester.

When any person is convicted of failing to leave seed trees

uncut as required by § 10.1-1164, the judge shall require the person so convicted to immediately post with the court a cash deposit or a bond of a reputable surety company in favor of the State Forester in the amount of thirty dollars for each seed tree cut in violation of this article. The total amount of the cash deposit or bond for any one acre shall not exceed \$240.

The judge shall cause the cash deposit or surety bond to be delivered to the State Forester, who shall hold the cash or surety bond in a special account until it is used or released as hereinafter provided. The purpose of the cash or surety bond is to ensure that the general cutover area on which seed trees have been cut in violation of this article shall be planted with tree seedlings of the same species as the trees cut in violation of this article in a manner hereinafter specified.

For each acre on which trees have been cut in violation of this article, a number up to 600, as determined by the State Forester, of tree seedlings shall be planted on the general cutover area on which seed trees were cut in violation. Each seedling shall be planted in a separate hole at least six feet from any other planted seedling. Seedlings shall be planted at least six feet from any sapling or tree which may shade the planted seedling from direct sunlight. If stems of noncommercial species prevent the planting of tree seedlings in the manner herein described on any area in violation, a sufficient number of such stems shall be cut, girdled or poisoned to permit the required number of seedlings to be planted. The seedlings shall be planted during the period of the year when forest tree seedlings are customarily planted in the section of the Commonwealth in which the cutover area is located. After receipt of the tree seedlings from the nursery, care shall be taken to

keep the seedling roots in a moist, uninjured condition at all times prior to actual planting, and the seedlings shall be planted in a careful, workmanlike manner. Planted seedlings shall be of the same tree species as the seed trees cut in violation, or if two or more seed tree species are cut in violation, the species of the planted seedlings shall be in proportion to the seed trees cut in violation. The above specified manner of planting and tree species planted shall be observed whether the planting is done by the person found in violation of this article or by the State Forester.

A person convicted of violating this article may plant tree seedlings on the general cutover area of the species and in the manner specified herein within one year following the date of conviction. Upon completion of the planting, the person shall immediately notify the State Forester in writing that the area has been planted. The State Forester or his representative shall then inspect the area and if he finds the planting to be done in accordance with the specifications set forth, he shall notify the person in writing and return the cash deposit or surety bond to the person depositing it.

If, upon inspection, the State Forester finds that the general cutover area or any part thereof has not been planted in the manner and during the period of year specified, or that the area has not been planted previous to one year following the date of conviction, the State Forester shall then plant the area during the next planting season, and do such forest cultural work as he deems necessary by reason of the delayed planting, keeping a careful and accurate account of all costs incurred, including a reasonable administrative cost. Following completion of the planting the State Forester shall prepare a certified

statement showing the cost of planting, which shall be paid from the cash deposit, or if a surety bond has been deposited the State Forester shall collect the cost of planting from the bonding company. The State Forester shall then submit to the person making the deposit a certified statement of the cost of planting, together with any cash remaining after paying the cost of planting and forest cultural work.

The State Forester shall not be required to expend for planting and forest cultural operations more than thirty dollars per seed tree cut in violation of this article.

(1956, c. 75, § 10-79.1; 1960, c. 269; 1972, c. 163; 1988, c. 891; 1996, c. 285.)

§ 10.1-1169. Liability for failure to carry out planting, cutting or management plan; reforestation of area by State Forester.

A. Any person failing to carry out, fulfill or complete any term or provision of any planting, cutting, or management plan submitted to and approved by the State Forester as provided in subsection D of § 10.1-1163 shall be liable to the Commonwealth in a civil suit brought by the Attorney General in the name of the Commonwealth in any court of competent jurisdiction for, at least \$240 per acre for each acre or part of an acre subject to such plan and legal fees incurred by the Commonwealth. All moneys collected pursuant to this subsection, exclusive of court costs and legal fees incurred by the Commonwealth, shall be delivered to the State Forester, who shall deposit the money in the Forestry Operations Fund in the state treasury until it is used or released as hereinafter provided. Such deposit may only be spent to ensure that the area for which the planting, cutting or management plan was

approved by the State Forester shall be reforested in the manner hereinafter specified.

B. During the year following the date of payment of any judgment rendered in favor of the Commonwealth pursuant to subsection A of this section and at the season when forest tree seedlings are customarily planted in the section of the Commonwealth where the planting, cutting or management plan area is located, the State Forester shall plant, or cause to be planted, on the area, as many forest tree seedlings as he deems necessary to reforest the area adequately. The tree species used in reforesting the area may be the same as the pine species cut from the area, or the species may be a mixture suitable for reforesting the area, in the judgment of the State Forester.

C. If, upon inspection, the State Forester finds that the area for which the forest management plan was approved is covered with a growth of woody plants, sprouts, brush and briars of such a density as to retard or preclude the establishment and development of the planted tree seedlings, he may perform or cause to be performed forest cultural measures, such as bulldozing, disking, poisoning by spray, and similar measures, necessary to make the area suitable for the planting, establishment and development of tree seedlings.

D. The State Forester shall keep an accurate account of all costs involved, including reasonable administrative costs, and shall transfer such costs from the Forestry Operations Fund into the Department operating account for protection and development of the forest resources of the Commonwealth. If, after having complied with the reforestation provisions of this section, any money remains in the special account to the credit of any particular case, the unexpended balance shall be paid to the person against

whom a judgment was rendered pursuant to the provisions of subsection A.

E. The expenditure by the State Forester for reforestation on any individual area as herein provided shall not exceed the amount of the judgment paid for the reforestation of such area.

(1964, c. 235, § 10-83.01; 1972, c. 163; 1986, c. 567; 1988, c. 891; 1996, c. 285.)

RIPARIAN FOREST BUFFER TAX CREDIT

§ 58.1-339.10. Riparian forest buffer protection for waterways tax credit.

A. For all taxable years beginning on or after January 1, 2000, any individual who owns land abutting a waterway on which timber is harvested, and who forbears harvesting timber on certain portions of the land near the waterway, shall be allowed a credit against the tax imposed by § 58.1-320 as set forth in this section. For purposes of this section, "waterway" means any perennial or intermittent stream of water depicted on the then most current United States Geological Survey topographical map.

B. The State Forester shall develop guidelines setting forth the general requirements of qualifying for the credit, including the land for which credit is eligible. To qualify for the credit, the individual must comply with an individualized Forest Stewardship Plan to be certified by the State Forester. In no event shall the distance from such waterway to the far end of the timber buffer, on which the tax credit is based, be less than thirty-five feet or

more than three hundred feet. The minimum duration for the buffer shall be fifteen years. The State Forester shall check each certified buffer annually to verify its continued compliance with the taxpayer's Forest Stewardship Plan. If the State Forester discovers that the timber in that portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such violation shall be delivered to the taxpayer by the State Forester.

C. The tax credit shall be an amount equal to twenty-five percent of the value of timber in that portion of the land retained as a buffer. The amount of such credit shall not exceed \$17,500 or the total amount of the tax imposed by this chapter, whichever is less, in the year that the timber outside the buffer was harvested. If the amount of the credit exceeds the taxpayer's liability for such taxable year, the excess may be carried over for credit against income taxes in the next five taxable years until the total amount of the tax credit has been taken. For purposes of this section, the amount of any credit attributable to qualified buffer protection by a partnership or electing small business corporation (S Corporation) shall be allocated to the individual partners or shareholders in proportion to their ownership or interest in the partnership or S Corporation. The land which is the subject of a tax credit under this section cannot again be the subject of a tax credit under this section for at least fifteen years. The State Forester shall check each certified buffer annually to verify its continued compliance with the taxpayer's Forest Stewardship Plan. If the State Forester discovers that the timber in that portion of the land retained as a buffer has been harvested prior to the end of the required term, written notification of such noncompliance shall be

delivered to the taxpayer by the State Forester.

D. To claim the credit authorized under this section, the taxpayer shall apply to the State Forester, who shall determine the amount of credit, using the assessed value of the timber in that portion of land retained as a buffer, and issue a certificate thereof to the taxpayer. The taxpayer shall attach the certificate to the Virginia tax return on which the credit is claimed. In the event the timber in that portion of land retained as a buffer is harvested by the taxpayer or any other person prior to the end of the term originally established in the taxpayer's individualized Forest Stewardship Plan, the taxpayer shall repay the tax credit claimed. Within sixty days after receiving written notification from the State Forester that the taxpayer's plan no longer qualifies for the credit, repayment shall be made to the Department of Taxation. If repayment is not made within the sixty-day period, the State Forester shall notify the locality's Commonwealth Attorney for assistance in collecting the funds from the taxpayer.

(2000, cc. 568, 607.)

SYNOPSIS OF DEBRIS IN STREAMS LAW AND PENALTIES

§ 62.1-194.2. Throwing trash, etc., into or obstructing river, creek, stream or swamp.

Unlawful for any person to block the free passage of boats or fish with trash, debris or tree laps. Enforceable by forest wardens under §10.1-1135

DEBRIS IN STREAMS LAW

§ 62.1-194.2. Throwing trash, etc., into or obstructing river, creek, stream or swamp.

It shall be unlawful for any person to throw or otherwise dispose of trash, debris, tree laps, logs, or fell timber or make or cause to be made any obstruction which exists for more than a week (excepting a lawfully constructed dam) in, under, over or across any river, creek, stream, or swamp, so as to obstruct the free passage of boats, canoes, or other floating vessels, or fish in such waters. The provisions of this section shall be enforceable by duly authorized state and local law-enforcement officials and by game wardens whose general police power under § 29.1-205 and forest wardens whose general police powers under § 10.1-1135 shall be deemed to include enforcement of the provisions of this section. Violations of this section shall be punishable as a misdemeanor under § 18.2-12; and each day for which any violation continues without removal of such obstruction, on and after the tenth day following service of process on the violator in accordance with § 19.2-75, shall constitute a separate offense punishable as a misdemeanor under § 18.2-12.

(Code 1950, § 62-187.1; 1964, c. 157; 1968, c. 86; 1988, c. 196.)

SYNOPSIS OF BIG SANDY RIVER LAW AND PENALTIES

§ 62.1-194.3. Obstructing tributaries of Big Sandy River; dumping refuse, etc., into Big Sandy River or its tributaries

(b) It shall be unlawful to dump, place or put any obstruction, including trees, timber, logs, etc. on the banks or in any tributaries of the Big Sandy River so as to restrict flow of said tributary or river.

<Guilty of Misdemeanor, fine of not less than \$100.00 nor more than \$500.00 and/or by confinement in jail of not more than 12 months>

BIG SANDY RIVER LAW

§ 62.1-194.3. Obstructing tributaries of Big Sandy River; dumping refuse, etc., into Big Sandy River or its tributaries.

(a) If any person places any dam or other obstruction in any tributary of Big Sandy River so as to prevent the free passage of timber, or any raft or boat, he shall be fined not less than \$50 nor more than \$500; and, upon conviction thereof, the court or judge of the county court shall order the dam or other obstruction to be removed at his expense.

(b) It shall also be unlawful for any person to dump, place or put, or cause to be dumped, placed, or put into, upon the banks of or into the channels of Big Sandy River or any of its tributaries, any dirt, stone, coal, slate, cinders,

mine refuse, trees, timber, logs, garbage or any other material or substance so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of said streams or impede the natural flow of the waters of said river or any of its tributaries or dump, place or put, or cause to be dumped, placed or put any dirt, stone, coal, slate, cinders, mine refuse, trees, timber, logs, garbage or any other material, or substance where the same does by natural rainfall or flow of water become washed or otherwise carried into, upon the banks of, or into the channels of, such river or any of its tributaries so as to in anywise narrow, fill or restrict or partially narrow, fill or restrict the channels of any of said streams or impede the natural flow of the waters thereof. Any person who violates any provision of this law shall be guilty of a misdemeanor and upon conviction be punished by a fine of not less than \$100 nor more than \$500 or by confinement in jail not more than twelve months or both such fine and imprisonment. Each day that any of said materials or substances so dumped, placed or put, or caused to be dumped, placed or put into or so allowed to be washed or otherwise so carried into, upon the banks of or into the channels of, said streams shall constitute a separate offense and be punished as such.

(c) In addition to the foregoing penalties for violation of this law, the judge of the circuit court of the county wherein any such violation occurs, whether there be a criminal conviction therefore or not shall, upon a bill in equity, filed by the attorney for the Commonwealth of such county or by any person whose property is damaged or whose property is threatened with damage from any such violation, award an injunction enjoining any violation of this law by any person found by the court in such suit to

have violated this law or causing the same to be violated, when made a party defendant to such suit.

(d) This section shall not be construed to restrict the construction or reconstruction of highways, or the construction or reconstruction of the right-of-way of any company subject to the Commonwealth Corporation Commission, or the maintenance thereof in either case, provided the channel thereafter continues to permit a flow of water in such stream at least as large as that prevailing theretofore, provided that if the channel above the point of such work be widened or deepened subsequently then such company may be required by the circuit court of the county on petition of any interested person to change its right-of-way where practicable so as to permit the increased flow of water.

(Code 1950, § 62-190; 1960, c. 257; 1968, c. 169.)

SYNOPSIS OF SILVICULTURAL WATER QUALITY LAW AND PENALTIES

§ 10.1-1181.1. Definitions

Defines owners, operators, pollution, silvicultural activity and Special Order as used in other parts of the law.

§ 10.1-1181.2. Conduct of Silvicultural Activities; issuance of Special Orders

(A) State Forester may notify owners and operators

that silvicultural activity is causing or likely to cause pollution.

(B) State Forester shall have the authority to issue Special Orders to implement corrective measures within a stated period of time only after the opportunity for a hearing.

(C) State Forester shall have the authority to issue Emergency Special Orders to owners and operators that are causing or likely to cause an alteration of the physical, chemical or biological properties of any state waters from sedimentation.

(D) Defines the method that the Special Order is served on owners and operators.

(E) Terms under which the State Forester will not issue a Special Order and unusual weather events.

(F) Hearings will be conducted in accordance with §2.2-4020 unless the parties agree to informal proceedings.

(G) State Forester will not issue notices, Special Orders or Emergency Special Orders more than one year after the silvicultural activity has occurred.

(H) Notification requirements for commercial timber harvesting activities.

<Civil Penalty of \$250.00 for initial violation and not more than \$1,000.00 for subsequent violations within a 24 month period>

§ 10.1-1181.3 Civil Penalties

(A) If an owner or operator fails to obey a Special Order they may be assessed a Civil Penalty. This section defines the terms by which the Civil Penalty is assessed.

<Civil Penalty of up to \$5,000.00 with each day of a

continuing violation deemed a separate offense>

(B) Penalty can be assessed only after owners and operators have been given the opportunity for a hearing under §2.2-4020 unless parties consent to informal proceedings. Defines terms of issuance of Final Order by the State Forester.

(C) Recording of Final Order as judgment in Clerk of Circuit Court Office where owners/operators have estate or property. Civil Penalties are paid into State Treasury and deposited into Virginia Forest Water Quality Fund pursuant to §10.1-1181.7.

(D) Defines civil charges in lieu of civil penalty.

§ 10.1-1181.4. Final Decisions; Costs of Hearing Examiner

(A) Final Order reduced to writing and containing Findings of Fact.

(B) Cost of administrative hearing to be paid by party other than prevailing party.

§ 10.1-1181.5. Judicial Review

Any person aggrieved by a Final Order is entitled to a Judicial Review in accordance with the Administrative Process Act.

§ 10.1-1181.6. Enforcement by Injunction

Any owner or operator that fails or refuses to obey any Special Order of the State Forester may be compelled to do so by Circuit Court Injunction.

§ 10.1-1181.7. Virginia Forest Water Quality Fund established; administration and disbursements

(A) Establishment and defines uses for the fund.

(B) Establishes process for disbursement of money from fund.

SILVICULTURAL WATER QUALITY LAWS

§ 10.1-1181.1. Definitions.

As used in this article unless the context requires a different meaning:

“Operator” means any person that operates or has operated or exercises or has exercised control over any silvicultural activity.

“Owner” means any person that (i) owns or leases land on which silvicultural activity occurs or has occurred or (ii) owns timber on land on which silvicultural activity occurs or has occurred.

“Pollution” means such alteration of the physical, chemical or biological properties of any state waters resulting from sediment deposition as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or

other reasonable uses.

"Silvicultural activity" means any forest management activity, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation.

"Special order" means a special order or emergency special order issued under subsection B or C of § 10.1-1181.2.

(1993, c. 948; 1998, c. 578.)

§ 10.1-1181.2. Conduct of silvicultural activities; issuance of special orders.

A. If the State Forester believes that an owner or operator has conducted or is conducting or has allowed or is allowing the conduct of any silvicultural activity in a manner that is causing or is likely to cause pollution, he may notify the owner or operator regarding the activity that is causing or likely to cause pollution and recommend (i) corrective measures and (ii) a reasonable time period to prevent, mitigate, or eliminate the pollution. If the owner or operator fails to take action to prevent, mitigate, or eliminate the pollution, the State Forester shall issue a special order pursuant to subsection B or C. Failure of the State Forester to notify an owner or operator of such corrective measures shall not impair the State Forester's authority to issue special orders pursuant to subsection B or C.

B. The State Forester shall have the authority to issue special orders to any owner or operator who has conducted or is conducting, or has allowed or is allowing to be conducted, any silvicultural activity in a manner that is causing or is likely to cause pollution, to cease immediately

all or part of the silvicultural activities on the site, and to implement specified corrective measures within a stated period of time. Such special orders are to be issued only after the owner or operator has been given the opportunity for a hearing with reasonable notice to the owner or operator, or both, of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection D.

C. If the State Forester finds that any owner or operator is conducting any silvicultural activity in a manner that is causing or is likely to cause an alteration of the physical, chemical or biological properties of any state waters resulting from sediment deposition presenting an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the State Forester may issue, without advance notice or hearing, an emergency order directing the owner or operator, or both, to cease immediately all or part of the silvicultural activities on the site, and to implement specified corrective measures within a stated period of time. The commencement of proceedings by the State Forester for the issuance of a special order pursuant to subsection B shall not impair the State Forester's authority to issue an emergency special order pursuant to this subsection. The State Forester shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner or operator, to affirm, modify, amend or cancel such emergency special order.

D. The owner or operator to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of the owner, or

operator, or by personal delivery by an agent of the State Forester, and the time limits specified shall be counted from the date of receipt.

E. The State Forester shall not issue a special order to any owner or operator who has incorporated generally acceptable water quality protection techniques in the operation of silvicultural activities, which techniques have failed to prevent pollution, if the State Forester determines that the pollution is the direct result of unusual weather events that could not have been reasonably anticipated.

F. Any hearing required under this section shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings.

G. The State Forester shall not issue a notice under subsection A or a special order or emergency special order under subsection B or C more than one year after the silvicultural activity has occurred on the property. Any such notice, special order, or emergency special order shall remain in effect until the State Forester determines that corrective measures specified therein have been implemented.

H. Prior to completion but not later than three working days after the commencement of an operation, the operator shall notify the State Forester of the commercial harvesting of timber. For the purpose of this section, commercial harvesting of timber means the harvesting of trees for the primary purpose of transporting to another site for additional manufacturing. The notification may be verbal or written and shall (i) specify the location and the actual or anticipated date of the activity and (ii) be made in a manner prescribed by the State Forester. If an operator fails to comply with the provisions of this subsection,

the State Forester may assess a civil penalty of \$250 for the initial violation and not more than \$1,000 for any subsequent violation within a 24-month period by the operator. Such civil penalties shall be paid into the state treasury and credited to the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

(1993, c. 948; 1998, c. 578; 2002, cc. 293, 304, 376; 2003, c. 812; 2004, c. 228.)

§ 10.1-1181.3. Civil penalties.

A. Any owner or operator who violates, or fails or refuses to obey any special order may be assessed a civil penalty by the State Forester. Such penalty shall not exceed \$5,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the owner's or operator's history of noncompliance; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the owner or operator was negligent; and the demonstrated good faith of the owner or operator in reporting and remedying the pollution.

B. A civil penalty may be assessed by the State Forester only after the owner or operator has been given an opportunity for a hearing. Any hearing required under this section shall be conducted in accordance with § 2.2-4020, unless the parties consent to informal proceedings. If the owner or operator fails to avail himself of the opportunity for a formal hearing, a civil penalty shall be assessed by the State Forester after the State Forester finds that a violation of a special order has occurred and the amount of the civil penalty warranted, and issues an order requiring

that the civil penalty be paid.

C. If a person who is required under this article to pay a civil penalty fails to do so, the State Forester may transmit a true copy of the final order assessing such penalty to the clerk of circuit court of any county or city wherein it is ascertained that the person owing the penalty has any estate; and the clerk to whom such copy is sent shall record it, as a judgment is required by law to be recorded, and shall index the same in the name of the Commonwealth as well as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the owner or operator within such county or city in the amount of the penalty. The State Forester may collect civil penalties that are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

D. With the consent of any owner or operator who has violated or failed, neglected or refused to obey any special order of the State Forester issued pursuant to subsection B or C of § 10.1-1181.2, the State Forester may provide, in an order issued by the State Forester against such owner or operator, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection A of this section. Such civil charges shall be in lieu of any civil penalty that could be imposed under subsection A of this section, and shall be placed in the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

(1993, c. 948; 2004, c. 228.)

§ 10.1-1181.4. Final decisions; costs of hearing examiner.

A. Any final order or decision rendered pursuant to this article shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by the decision.

B. If any final agency case decision is rendered following a hearing conducted in accordance with § 2.2-4020 presided over by a hearing officer, the officer shall be paid by the State Forester if the owner or operator is the prevailing party, or by the owner or operator if the State Forester is the prevailing party. The findings of the hearing officer shall specify which party prevailed in the hearing.

(1993, c. 948.)

§ 10.1-1181.5. Judicial review.

Any person aggrieved by a final order or decision under this article shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The commencement of a proceeding for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the State Forester.

(1993, c. 948.)

§ 10.1-1181.6. Enforcement by injunction.

Any owner or operator violating or failing, neglecting or refusing to obey any special order issued by the State Forester may be compelled in a proceeding instituted in any appropriate circuit court by the State Forester to obey same

and to comply therewith by injunction, mandamus or other appropriate remedy, without the necessity of showing that an adequate remedy at law does not exist.

(1993, c. 948.)

§ 10.1-1181.7. Virginia Forest Water Quality Fund established; administration and disbursements.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Forest Water Quality Fund, hereafter referred to as the Fund, to be used for education efforts, promoting the implementation of proper silvicultural activities, research, and monitoring the effectiveness of practices to prevent erosion and sedimentation. The Fund shall be a nonlapsing fund consisting of moneys received and credited to the Fund by the State Treasurer for civil penalties and civil charges assessed pursuant to this article. Interest earned on the Fund shall be credited to the Fund. The Fund shall be established on the books of the State Comptroller. Any money remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund.

B. Disbursement of moneys from the Fund shall be made by the State Comptroller at the written request of the State Forester. Disbursements from the Fund may be made for the purposes set forth in subsection A of this section, including, but not limited to, personnel, administrative, and equipment costs and expenses directly incurred by the Department in connection with such purposes.

(1993, c. 948.)



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